

RESEARCH APPENDIX

Date Transfer Requested: 11/30/2018 (Per: CMH)

Part
1 of 2

Appendix A ... has been added to the 2017 LRB-6070

Appendix A LRB 17-5985

Appendix C LRB 17-6025

Appendix B LRB 17-5990

Appendix D LRB 17-6051

2017 DRAFTING REQUEST**Bill**

For: **Howard Marklein (608) 266-0703** Drafter: **elunder**
 By: **Vince** Secondary Drafters:
 Date: **11/14/2018** May Contact: **Sean at LFB**
Tom
 Same as LRB: **-6080**

Submit via email: **YES**
 Requester's email: **Sen.Marklein@legis.wi.gov**
 Carbon copy (CC) to: **erika.lunder@legis.wisconsin.gov**
joseph.kreye@legis.wisconsin.gov
Sean.Moran@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Election for pass-through taxation regime

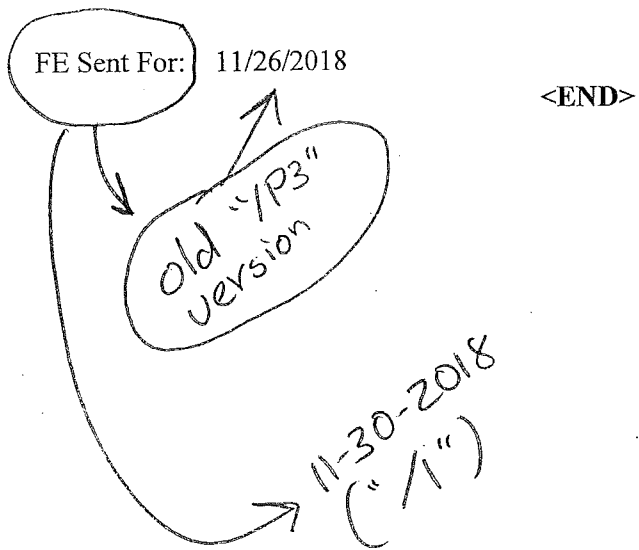
Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	elunder 11/14/2018	kmochal 11/15/2018			
/P1			lparisi 11/15/2018		State
/P2		kmochal 11/26/2018	dwalker 11/21/2018		State
/P3		csicilia 11/27/2018	dwalker 11/26/2018		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P4	elunder 11/29/2018		mbarman 11/27/2018		State
/P5		wjackson 11/29/2018	dwalker 11/29/2018		State
/P6		wjackson 11/29/2018	dwalker 11/29/2018		State
/1			mbarman 11/30/2018		State





State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-5985/P1 P2
EKL:wlj&km

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

/N: 4/20

1 AN ACT *to amend* 71.05 (6) (a) 14., 71.07 (7) (b), 71.36 (1) and 71.365 (1); and *to*
2 *create* 71.05 (10) (dm), 71.21 (6), 71.365 (4m) and 71.775 (3) (a) 4. of the
3 statutes; **relating to:** election of pass-through entities to be taxed at the entity
4 level and requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

This bill allows pass-through entities to elect to be taxed at the entity level for purposes of the state's income and franchise taxes.

Under current law, pass-through entities, such as tax-option corporations and partnerships, are generally not subject to the income or franchise tax at the entity level. Rather, any item of income, loss, or deduction flows through to their shareholders, partners, or members, who are then subject to tax. The bill allows tax-option corporations and partnerships, including limited liability companies and other entities that are treated as partnerships under federal tax law, to elect to be taxed at the entity level for purposes of the income and franchise taxes. Persons who hold more than 50 percent ownership of the pass-through entity must consent to the election and must consent to any revocation of the election. The bill allows the election to be made for taxable years beginning in 2018.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 71.05 (6) (a) 14. of the statutes is amended to read:

2 71.05 (6) (a) 14. Any amount received as a proportionate share of the earnings
3 and profits of a corporation that is an S corporation for federal income tax purposes
4 if those earnings and profits accumulated during a year for which the shareholders
5 have elected under s. 71.365 (4) (a) not to be a tax-option corporation, to the extent
6 not included in federal adjusted gross income for the current year. This subdivision
7 does not apply to earnings and profits accumulated during a year for which the
8 shareholders have elected under s. 71.365 (4m) (a) to be taxed at the entity level.

9 **SECTION 2.** 71.05 (10) (dm) of the statutes is created to read:

10 71.05 (10) (dm) Any item of income, loss, or deduction passed through from an
11 entity that has made an election under s. 71.21 (6) (a) or 71.365 (4m) (a).

12 **SECTION 3.** 71.07 (7) (b) of the statutes is amended to read:

13 71.07 (7) (b) 1. Subject to conditions and limitations in pars. (c) and (d), if a
14 resident individual, estate or trust pays a net income tax to another state, that
15 resident individual, estate or trust may credit the net tax paid to that other state on
16 that income against the net income tax otherwise payable to the state on income of
17 the same year. The credit may not be allowed unless the income taxed by the other
18 state is also considered income for Wisconsin tax purposes. The credit may not be
19 allowed unless claimed within the time provided in s. 71.75 (2), but s. 71.75 (4) does
20 not apply to those credits. For purposes of this paragraph, amounts declared and
21 paid under the income tax law of another state are considered a net income tax paid

1 to that other state only in the year in which the income tax return for that state was
2 required to be filed.

3 2. Income and franchise taxes paid to another state by a tax-option corporation,
4 partnership, or limited liability company that is treated as a partnership may be
5 claimed as a credit under ~~this paragraph~~ subd. 1. by that corporation's shareholders,
6 that partnership's partners, or that limited liability company's members who are
7 residents of this state and who otherwise qualify under this paragraph. This
8 subdivision does not apply to an entity that has made an election under s. 71.21 (6)
9 (a) or 71.365 (4m) (a).

10 **SECTION 4.** 71.21 (6) of the statutes is created to read:

11 71.21 (6) (a) If persons who, on the day on which an election is made, hold more
12 than 50 percent of the capital and profits of a partnership consent, a partnership that
13 is a partnership for federal income tax purposes may elect, on or before the due date
14 or extended due date of its return under this chapter, to be taxed at the entity level
15 as if it were a tax-option corporation electing under s. 71.365 (4m) (a).

16 (b) If persons who, on the day on which the election under this paragraph is
17 made, hold more than 50 percent of the capital and profits of a partnership consent,
18 a partnership that is a partnership for federal income tax purposes may elect, on or
19 before the due date or extended due date of its return under this chapter, to revoke
20 for that taxable year its election under par. (a).

21 (c) The department shall promulgate rules to implement this subsection.

22 **SECTION 5.** 71.36 (1) of the statutes is amended to read:

23 71.36 (1) It is the intent of this section that shareholders of tax-option
24 corporations include in their Wisconsin adjusted gross income their proportionate
25 share of the corporation's tax-option items unless the corporation elects under s.

1 71.365 (4) (a) not to be a tax-option corporation or elects under s. 71.365 (4m) (a) to
2 be taxed at the entity level.

3 **SECTION 6.** 71.365 (1) of the statutes is amended to read:

4 **71.365 (1) ADJUSTED BASIS OF SHAREHOLDERS' STOCK IN TAX-OPTION CORPORATION.**

5 For purposes of this chapter, the adjusted basis of a shareholder in the stock and
6 indebtedness of a tax-option corporation shall be determined in the manner
7 prescribed by the internal revenue code for a shareholder of an S corporation, except
8 that the nature and amount of items affecting that basis shall be determined under
9 this chapter. This subsection does not apply to 1978 and earlier taxable years of

10 corporations which were S corporations for federal income tax purposes or to taxable
11 years of corporations for which an election has been made under sub. (4) (a) or (4m)

12 (a).

13 **SECTION 7.** 71.365 (4m) of the statutes is created to read:

14 **71.365 (4m) ELECTION TO PAY TAX AT THE ENTITY LEVEL.** (a) If persons who hold
15 more than 50 percent of the shares on the day on which an election is made consent,
16 a corporation that is an S corporation for federal income tax purposes may elect, on
17 or before the due date or extended due date of its return under this chapter, to pay
18 tax without taking into account the deductions from net income under s. 71.36 (1m)
19 (a) of amounts that would otherwise be included in the Wisconsin adjusted gross
20 income of its shareholders and the capital gains deduction under s. 71.05 (6) (b) 9.
21 for that taxable year and for later taxable years until its status is again changed.

22 (b) If persons who, on the day on which the election under this paragraph is
23 made, hold more than 50 percent of the shares of a corporation that has elected to
24 be taxed at the entity level under par. (a) consent, a corporation that is an S
25 corporation for federal income tax purposes may elect, on or before the due date or

1 extended due date of its return under this chapter, to revoke for that taxable year its
2 election under par. (a).

3 (c) The department shall promulgate rules to implement this subsection.

4 **SECTION 8.** 71.775 (3) (a) 4. of the statutes is created to read:

5 71.775 (3) (a) 4. The pass-through entity has elected under s. 71.21 (6) (a) or
6 71.365 (4m) (a) to be taxed at the entity level.

7 **SECTION 9. Initial applicability.**

8 (1) This act first applies to taxable years beginning on January 1, 2018.

9 (END)

2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-5985/P1ins
EKL:wlj&km

1 INS 4-9

2 This subsection ^{2 applies} (shall apply) to taxable years of corporations for which an

3 election has been made under sub. (4m) (a).

Score



11/19 Meeting LRB-5985 (2017-18)

Sec. 6: Add express statement that S. 71.365(1) applies to corps that make (4/m)(a) election (i.e., (4)(a) exception in S. 71.365(1) does not apply).

Sen. Marklein:

The purpose of this email is to summarize what we talked about today regarding a legislative change in order to bolster the deductibility of Wisconsin state income taxes on the income of Passthrough Entities (S corporations plus LLCs and other entities treated as partnerships for federal income tax purposes). It is clear from the legislative history to the Tax Cuts and Jobs Act that taxes imposed at the entity level are deductible, even for Passthrough Entities where the income is "passed through" to be reported on the individual shareholder and other owner returns for federal income tax purposes.

The Wisconsin income tax statutes already allow for an S corporation to elect out of passthrough status for Wisconsin tax purposes only, and for the imposition of Wisconsin income tax at the entity level as if it were a C Corporation in some circumstances. We could build on these provisions in order to establish a pass-through tax regime, whereby Wisconsin income tax would be imposed at the entity level, and thereby be deductible for federal income tax purposes. In essence, this approach would involve the following:

1. Election, similar to the one currently contained in section 71.365(4) for Wisconsin S corporations
2. Imposition of tax at the entity level, the same as currently provided for unreported S corporation income under section 71.36(1)(a) of the Wisconsin Statutes
3. Exclusion from taxation at the owner level of all income already taxed at the entity level
4. Basis stepup for the owners' entity interests (in order to avoid eventual double taxation for Wisconsin purposes)
5. Applicability both to S corporations and to LLCs and other entities treated as partnerships

The net effect of this approach would be as follows:

1. There should be no revenue loss to Wisconsin for income taxed under this regime, because the 7.9% Wisconsin C Corporation income tax rate is higher than all of the Wisconsin individual income tax rates (top rate = 7.65%).
2. Wisconsin business owners would still be better off, because a deductible 7.9% rate is better after-tax than a nondeductible 7.65% rate. The potential savings are almost 2.1% (even higher for businesses not qualifying for the new section 199A deduction).
3. The proposal is unlikely to encounter much in the way of taxpayer pushback, because the structure is entirely elective.

Lunder, Erika

From: Thomas J. Nichols <tjn@mtfn.com>
Sent: Tuesday, November 13, 2018 4:38 PM
To: Williams, Vincent; Kreye, Joseph; Lunder, Erika; Russell Wolff
Cc: Sen.Marklein; Rep.Kooyenga; Lonergan, Sandy
Subject: RE: S-Corporation to elect out of passthrough status for Wisconsin tax purposes only
Attachments: Wis. Stat. all changes REDLINE (11.13.18).DOCX

All, attached is proposed draft statutory language. As you will see, I tried to build upon language already contained in the statutes as much as possible. I realize that you will all want to take a careful look at this, but hopefully this will be a good start.

Thomas J. Nichols | Attorney at Law

MEISSNER TIERNEY
FISHER & RICHOLDS

111 EAST KILBOURN AVENUE, 19th FLOOR

MILWAUKEE, WI 53202

P 414.273.1300 x1380 | F 414.273.5840

[website](#) | [bio](#) | [vCard](#) | [LinkedIn](#) | [map](#) | [email](#)

From: Williams, Vincent <Vincent.Williams@legis.wisconsin.gov>
Sent: Tuesday, November 13, 2018 9:21 AM
To: Thomas J. Nichols <tjn@mtfn.com>; Kreye, Joseph <Joseph.Kreye@legis.wisconsin.gov>; Lunder, Erika <Erika.Lunder@legis.wisconsin.gov>
Cc: Sen.Marklein <Sen.Marklein@legis.wisconsin.gov>; Rep.Kooyenga <Rep.Kooyenga@legis.wisconsin.gov>; Lonergan, Sandy <Sandy.Lonergan@legis.wisconsin.gov>
Subject: S-Corporation to elect out of passthrough status for Wisconsin tax purposes only

Hi Tom,

This is a follow-up to Sen. Marklein's phone call.

Included on this email is Joseph Kreye and Erika Lunder from the Legislative Reference Bureau. They are the drafting attorneys responsible for this subject matter.

Sen. Marklein has given the drafting attorneys permission to discuss this draft with you.

You may connect with the drafting attorneys directly to work on the language for this change.

Regards,

Vince Williams
Legislative Aide & Committee Clerk
Office of State Senator Howard Marklein
17th Senate District
PO Box 7882
Madison, WI 53707-7882
www.legis.wisconsin.gov
(608) 266-0703 or (800) 978-8008

Amend 71.05 Income computation.

- ✓ (6) MODIFICATIONS AND TRANSITIONAL ADJUSTMENTS. Some of the modifications referred to in s. 71.01(13) and (14) are:

(a) *Additions.* To federal adjusted gross income add:

14. Any amount received as a proportionate share of the earnings and profits of a corporation that is an S corporation for federal income tax purposes if those earnings and profits accumulated during a year for which the shareholders have elected under s. 71.365(4) not to be a tax-option corporation, to the extent not included in federal adjusted gross income for the current year. The foregoing provision shall not apply to earnings and profits accumulated during a year for which the shareholders have elected under s. 71.365(4m) to be taxed at the entity level.

- ✓ (10) OTHER ADJUSTMENTS. Add to or subtract from federal adjusted gross income, as appropriate:

- (d) Any item of income, loss or deduction passed through from a corporation that is an S corporation for federal income tax purposes and either is: under s. 71.365(4), not a tax-option corporation or, under s. 71.21(6) or s. 71.365(4m), has elected to be taxed at the entity level.

Amend 71.07 Credits.

- ✓ (7) OTHER STATE TAX CREDIT.

- (b) Subject to conditions and limitations in pars. (c) and (d), if a resident individual, estate or trust pays a net income tax to another state, that resident individual, estate or trust may credit the net tax paid to that other state on that income against the net income tax otherwise payable to the state on income of the same year. The credit may not be allowed unless the income taxed by the other state is also considered income for Wisconsin tax purposes. The credit may not be allowed unless claimed within the time provided in s. 71.75(2), but s. 71.75(4) does not apply to those credits. For purposes of this paragraph, amounts declared and paid under the income tax law of another state are considered a net income tax paid to that other state only in the year in which the income tax return for that state was required to be filed. Income and franchise taxes paid to another state by a tax-option corporation (other than a tax option corporation that has elected, under s. 71.365(4m), to be taxed at the entity level), partnership, or limited liability company that is treated as a partnership (other than a partnership that has elected, under s. 71.21(6), to be taxed at the entity level), may be claimed as a credit under this paragraph by that corporation's shareholders, that partnership's partners, or that limited liability company's members who are residents of this state and who otherwise qualify under this paragraph.

Add 71.21(6) Computation.

- ✓ (6) (a) If persons who hold more than 50 percent of the capital and profits of the partnership on the day on which this election is made consent, a partnership for federal income tax

Formatted: Indent: Left: -0.13", Hanging: 1"

Formatted: Indent: Left: 0.5", Hanging: 0.38"

Formatted: Indent: Left: -0.13", Hanging: 1", Tab stops: -0.13", Left + 0.25", Left

Formatted: Indent: Left: 0.5", Hanging: 0.38"

Formatted: Indent: Left: -0.13", Hanging: 1"

Formatted: Indent: Left: 0.5", Hanging: 0.38"

Formatted: Font: (Default) Times New Roman

purposes may elect, on or before the due date or extended due date of its return under this chapter, to be taxed at the entity level as if it were a tax option corporation electing under section 71.365(4m).

Formatted: Font: (Default) Times New Roman

(b) If persons who, on the day on which the election occurs, hold more than 50 percent of the capital and profits of a partnership that has elected under par. (a) consent, a partnership that is a partnership for federal income tax purposes may elect, on or before the due date or extended due date of its return under this chapter, to revoke for that taxable year its election under par. (a).

(c) The department shall issue regulations as necessary to implement the purpose of this sub. (6).

Amend 71.36 Tax-option items.

- ✓ (1) It is the intent of this section that shareholders of tax-option corporations include in their Wisconsin adjusted gross income their proportionate share of the corporation's tax-option items unless the corporation elects either, under s. 71.365 (4) (a), not to be a tax-option corporation or, under s. 71.365(4m), to be taxed at the entity level.

Formatted: Indent: Left: 0.5", Hanging: 0.38"

Amend 71.365 General provisions.

- ✓ (1) ADJUSTED BASIS OF SHAREHOLDERS' STOCK IN TAX-OPTION CORPORATION. For purposes of this chapter, the adjusted basis of a shareholder in the stock and indebtedness of a tax-option corporation shall be determined in the manner prescribed by the internal revenue code for a shareholder of an S corporation, except that the nature and amount of items affecting that basis shall be determined under this chapter. This subsection does not apply to 1978 and earlier taxable years of corporations which were S corporations for federal income tax purposes or to taxable years of corporations for which an election has been made under sub. (4) (a). The foregoing provision shall not apply to tax option corporations that have elected, under s. 71.365(4m), to be taxed at the entity level.

Formatted: Indent: Left: -0.13", Hanging: 1"

Formatted: Indent: Left: 0.5", Hanging: 0.38"

(4m) ELECTION TO PAY TAX UNDER s. 71.36(1m).

- ✓ (a) If persons who hold more than 50 percent of the shares on the day on which this election is made consent, a corporation that is an S corporation for federal income tax purposes may elect, on or before the due date or extended due date of its return under this chapter, to pay tax without taking into account the deductions from net income under s. 71.36(1m)(a) of amounts that would otherwise be included in the Wisconsin gross income of its shareholders and the capital gains deduction under s. 71.05(6)(b) for that taxable year and for later taxable years until its status is again changed.
- (b) If persons who, on the day on which the election occurs, hold more than 50 percent of the shares of a corporation that has elected to be taxed at the entity level under par. (a) consent, a corporation that is an S corporation for federal income tax purposes may elect, on or before the due date or extended due date of its return under this chapter, to revoke for that taxable year, its election under par. (a).

- (c) The department shall issue regulations as necessary to implement the purpose of this sub. (4m).

Amend 71.775 Withholding from nonresident members of pass-through entities.

✓ (3) EXEMPTIONS.

- (a) A nonresident partner's, member's, shareholder's, or beneficiary's share of income from the pass-through entity that is attributable to this state shall not be included in determining the withholding under sub. (2) if any of the following applies:

4. The passthrough entity has elected, under s. 71.21(6) or s. 71.365(4m) to be taxed at the entity level.

Act itself

This act takes effect retroactively to January 1, 2018.

Formatted: Indent: Left: -0.13", Hanging: 1"

Formatted: Indent: Left: 0.5", Hanging: 0.38"

Formatted: Indent: Left: -0.13", Hanging: 1"

Formatted: Indent: Left: 0.5", Hanging: 0.38"

Formatted: Indent: Left: -0.13", Hanging: 1"

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Indent: First line: 0.5"



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-5985/9²

EKL:...

WJL/km

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1N: 11/14

1

AN ACT ^{gc}...; relating to: election of pass-through entities to be taxed at the entity

2

level, and granting rule-making authority requiring the exercise of

^{This} Analysis by the Legislative Reference Bureau

The bill allows pass-through entities to elect to be taxed at the entity level for purposes of the state's income and franchise taxes.

Under current law, pass-through entities, such as tax option corporations and partnerships, are generally not subject to the income or franchise tax at the entity level. Rather, any item of income, loss, or deduction flows through to their shareholders, partners, or members, who are then subject to tax. This bill allows tax option corporations and partnerships (including limited liability companies and other entities that are treated as partnerships under federal tax law) to elect to be taxed at the entity level for purposes of the income and franchise taxes. The persons who hold more than 50 percent ownership of the pass-through entity must consent to the election on the day it is made, and these persons must consent to any revocation of the election. The bill allows the election to be made for taxable years beginning in 2018.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 71.05 (6) (a) 14. of the statutes is amended to read:

2 71.05 (6) (a) 14. Any amount received as a proportionate share of the earnings
3 and profits of a corporation that is an S corporation for federal income tax purposes
4 if those earnings and profits accumulated during a year for which the shareholders
5 have elected under s. 71.365 (4) (a) not to be a tax-option corporation, to the extent
6 not included in federal adjusted gross income for the current year. This subdivision
7 does not apply to earnings and profits accumulated during a year for which the
8 shareholders have elected under s. 71.365 (4m) (a) to be taxed at the entity level.

History: 1987 a. 312; 1987 a. 411 ss. 42, 43, 45, 47 to 49, 51 to 53; 1989 a. 31, 46; 1991 a. 2, 37, 39, 269; 1993 a. 16, 112, 204, 263, 437; 1995 a. 27, 56, 209, 227, 261, 371, 403, 453; 1997 a. 27, 35, 39, 237; 1999 a. 9, 32, 44, 54, 65, 167; 2001 a. 16, 104, 105, 109; 2003 a. 85, 99, 119, 135, 183, 255, 289, 321, 326; 2005 a. 22, 25, 216, 254, 335, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2, 28, 205, 265, 269, 276, 295, 332, 344; 2011 a. 3, 5, 10, 32, 212, 232, 237; 2011 a. 260 ss. 80, 81; 2013 a. 19, 20, 128, 145; 2013 a. 166 s. 76; 2013 a. 173, 227; 2015 a. 55, 60, 84, 195; 2015 a. 197 s. 51; 2015 a. 216, 312; 2017 a. 17, 58, 59, 197, 231.

9 **SECTION 2.** 71.05 (10) (dm) of the statutes is created to read:

10 71.05 (10) (dm) Any item of income, loss, or deduction passed through from an
11 entity that has made an election under s. 71.21 (6) (a) or 71.365 (4m) (a). ✓

12 **SECTION 3.** 71.07 (7) (b) of the statutes is amended to read:

13 1. 71.07 (7) (b) Subject to conditions and limitations in pars. (c) and (d), if a
14 resident individual, estate or trust pays a net income tax to another state, that
15 resident individual, estate or trust may credit the net tax paid to that other state on
16 that income against the net income tax otherwise payable to the state on income of
17 the same year. The credit may not be allowed unless the income taxed by the other
18 state is also considered income for Wisconsin tax purposes. The credit may not be
19 allowed unless claimed within the time provided in s. 71.75 (2), but s. 71.75 (4) does
20 not apply to those credits. For purposes of this paragraph, amounts declared and
21 paid under the income tax law of another state are considered a net income tax paid
22 to that other state only in the year in which the income tax return for that state was
23 required to be filed. Income and franchise taxes paid to another state by a tax-option

Fix
Scoring

2. 71.07 (7) (b)

1 corporation, partnership, or limited liability company that is treated as a
 2 partnership may be claimed as a credit under ^{Subcl. 1.} ~~this paragraph~~ by that corporation's
 3 shareholders, that partnership's partners, or that limited liability company's
 4 members who are residents of this state and who otherwise qualify under this
 5 paragraph; however, this sentence ^{⊙ This paragraph} ^{Subdivision} does not apply to an entity that has made an
 6 election under s. 71.21 (6) (a) or 71.365 (4m) (a).

Cross-reference: See also ch. HS 3, Wis. adm. code.

History: 1987 a. 312; 1987 a. 411 ss. 63, 79 to 82, 85, 86; 1987 a. 419, 422; 1989 a. 31, 44, 56, 100, 359; 1991 a. 39, 269, 292; 1993 a. 16, 112, 204, 471, 491; 1995 a. 27 ss. 3377m to 3393m, 9116 (5); 1995 a. 209, 227, 400, 453; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9, 10, 32; 1999 a. 150 s. 672; 1999 a. 198; 2001 a. 16, 109; 2003 a. 72, 99, 135, 183, 255, 267, 326; 2005 a. 25, 49, 72, 74, 97, 177, 254, 361, 387, 479, 483, 487; 2007 a. 11, 20, 96, 97, 100; 2009 a. 2, 11, 28, 180, 185, 265, 267, 269, 276, 294, 295, 332, 401; 2011 a. 15, 32, 67, 212, 213, 232, 237; 2011 a. 260 s. 80; 2013 a. 20, 54, 62, 116, 145; 2013 a. 166 s. 77; 2015 a. 55, 186; 2015 a. 197 s. 51; 2015 a. 237, 312; 2017 a. 58, 59, 176, 197; 2017 a. 364 ss. 11 to 13, 48; 2017 a. 365 s. 111; 2017 a. 366; s. 13.92 (1) (bm) 2.; s. 35.17 correction in (9r) (j).

7 SECTION 4. 71.21 (6) of the statutes is created to read:

8 71.21 (6) (a) If persons who hold more than 50 percent of the capital and profits
 9 of ^{or a} the partnership ^{an} on the day on which ^{e an} this election is made consent, a partnership
 10 for federal income tax purposes may elect, on or before the due date or extended due
 11 date of its return under this chapter, to be taxed at the entity level as if it were a tax [⊙]
 12 option corporation electing under ^{s.} section 71.365 (4m) (a). ^{this paragraph}

13 (b) If persons who, on the day on which the election ^{under par. (a) is made} occurs, hold more than 50
 14 percent of the capital and profits of a partnership [⊙] that has elected under par. (a)
 15 ^{Stet.} consent, a partnership [⊙] that is a partnership for federal income tax purposes may
 16 elect, on or before the due date or extended due date of its return under this chapter,
 17 to revoke for that taxable year its election under par. (a).

18 (c) The department shall promulgate rules to implement this subsection.

19 SECTION 5. 71.36 (1) of the statutes is amended to read:

20 71.36 (1) It is the intent of this section that shareholders of tax-option
 21 corporations include in their Wisconsin adjusted gross income their proportionate
 22 share of the corporation's tax-option items unless the corporation elects under s.

that is a partnership

1 71.365 (4) (a) not to be a tax-option corporation or elects under s. 71.365 (4m) (a) to
2 be taxed at the entity level. ✓

3 SECTION 6. 71.365 (1) of the statutes is amended to read:

4 71.365 (1) ADJUSTED BASIS OF SHAREHOLDERS' STOCK IN TAX-OPTION CORPORATION.

5 For purposes of this chapter, the adjusted basis of a shareholder in the stock and
6 indebtedness of a tax-option corporation shall be determined in the manner
7 prescribed by the internal revenue code for a shareholder of an S corporation, except
8 that the nature and amount of items affecting that basis shall be determined under
9 this chapter. This subsection does not apply to 1978 and earlier taxable years of
10 corporations which were S corporations for federal income tax purposes or to taxable
11 years of corporations for which an election has been made under sub. (4) (a) or (4m)
12 (a). ✓

History: 1987 a. 312; 1987 a. 411 ss. 40, 50, 147; 1989 a. 31, 336; 1991 a. 39, 269; 1993 a. 16, 437; 1995 a. 27, 380; 1997 a. 27, 37, 237; 1999 a. 9, 194; 2001 a. 109; 2005 a. 362; 2009 a. 28; 2013 a. 20.

Cross-reference: See also s. Tax 2.03, Wis. adm. code.

13 SECTION 7. 71.365 (4m) of the statutes is created to read:

14 71.365 (4m) ELECTION TO PAY TAX AT THE ENTITY LEVEL. (a) If persons who
15 hold more than 50 percent of the shares on the day on which ^{can} ~~this~~ election is made
16 consent, a corporation that is an S corporation for federal income tax purposes may
17 elect, on or before the due date or extended due date of its return under this chapter,
18 to pay tax without taking into account the deductions from net income under s. 71.36
19 (1m) (a) [✓] of amounts that would otherwise be included in the Wisconsin adjusted gross
20 income of its shareholders and the capital gains deduction under s. 71.05 (6) (b) 9. ✓
21 for that taxable year and for later taxable years until its status is again changed.

22 (b) If persons who, on the day on which the election ^{under par (a) is made} ~~occurs~~, hold more than 50 ^{this paragraph}
23 percent of the shares of a corporation that has elected to be taxed at the entity level

1 under par. (a) consent, a corporation that is an S corporation for federal income tax
2 purposes may elect, on or before the due date or extended due date of its return under
3 this chapter, to revoke for that taxable year its election under par. (a).

4 (c) The department shall promulgate rules to implement this subsection.

5 **SECTION 8.** 71.775 (3) (a) 4. of the statutes is created to read:

6 71.775 (3) (a) 4. The pass-through entity has elected under s. 71.21 (6) (a) or
7 71.365 (4m) (a) to be taxed at the entity level.

8 **SECTION 9. Initial applicability.**

9 (1) This act first applies to taxable years beginning on January 1, 2018.

10 (END)



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-5985/P1
EKL:wlj&km

P2

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to amend* 71.05 (6) (a) 14., 71.07 (7) (b), 71.36 (1) and 71.365 (1); and *to*
2 *create* 71.05 (10) (dm), 71.21 (6), 71.365 (4m) and 71.775 (3) (a) 4. of the
3 statutes; **relating to:** election of pass-through entities to be taxed at the entity
4 level and requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

This bill allows pass-through entities to elect to be taxed at the entity level for purposes of the state's income and franchise taxes.

Under current law, pass-through entities, such as tax-option corporations and partnerships, are generally not subject to the income or franchise tax at the entity level. Rather, any item of income, loss, or deduction flows through to their shareholders, partners, or members, who are then subject to tax. The bill allows tax-option corporations and partnerships, including limited liability companies and other entities that are treated as partnerships under federal tax law, to elect to be taxed at the entity level for purposes of the income and franchise taxes. Persons who hold more than 50 percent ownership of the pass-through entity must consent to the election and must consent to any revocation of the election. The bill allows the election to be made for taxable years beginning in 2018.

1 extended due date of its return under this chapter, to revoke for that taxable year its
2 election under par. (a).

3 (c) The department shall promulgate rules to implement this subsection.

4 **SECTION 8.** 71.775 (3) (a) 4. of the statutes is created to read:

5 71.775 (3) (a) 4. The pass-through entity has elected under s. 71.21 (6) (a) or
6 71.365 (4m) (a) to be taxed at the entity level.

7 **SECTION 9. Initial applicability.**

8 (1) This act first applies to taxable years beginning on January 1, 2018.

9 (END)



11/26

Vince

LRB-5985 (17-18)

Change effective date for LLC & LLP
to 2019



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-5985/P3
EKL:wj&km

P3

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

IN: 11/26
DUE: 11/24

- 1 AN ACT *to amend* 71.05 (6) (a) 14., 71.07 (7) (b), 71.36 (1) and 71.365 (1); and *to*
2 *create* 71.05 (10) (dm), 71.21 (6), 71.365 (4m) and 71.775 (3) (a) 4. of the
3 statutes; **relating to:** election of pass-through entities to be taxed at the entity
4 level and requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

This bill allows pass-through entities to elect to be taxed at the entity level for purposes of the state's income and franchise taxes.

Under current law, pass-through entities, such as tax-option corporations and partnerships, are generally not subject to the income or franchise tax at the entity level. Rather, any item of income, loss, or deduction flows through to their shareholders, partners, or members, who are then subject to tax. The bill allows tax-option corporations and partnerships, including limited liability companies and other entities that are treated as partnerships under federal tax law, to elect to be taxed at the entity level for purposes of the income and franchise taxes. Persons who hold more than 50 percent ownership of the pass-through entity must consent to the election and must consent to any revocation of the election. The bill allows the election to be made for taxable years beginning in 2018.

for tax-option corporations
and 2019 for other entities ✓

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 71.05 (6) (a) 14. of the statutes is amended to read:

2 71.05 **(6)** (a) 14. Any amount received as a proportionate share of the earnings
3 and profits of a corporation that is an S corporation for federal income tax purposes
4 if those earnings and profits accumulated during a year for which the shareholders
5 have elected under s. 71.365 (4) (a) not to be a tax-option corporation, to the extent
6 not included in federal adjusted gross income for the current year. This subdivision
7 does not apply to earnings and profits accumulated during a year for which the
8 shareholders have elected under s. 71.365 (4m) (a) to be taxed at the entity level.

9 **SECTION 2.** 71.05 (10) (dm) of the statutes is created to read:

10 71.05 **(10)** (dm) Any item of income, loss, or deduction passed through from an
11 entity that has made an election under s. 71.21 (6) (a) or 71.365 (4m) (a).

12 **SECTION 3.** 71.07 (7) (b) of the statutes is amended to read:

13 71.07 **(7)** (b) 1. Subject to conditions and limitations in pars. (c) and (d), if a
14 resident individual, estate or trust pays a net income tax to another state, that
15 resident individual, estate or trust may credit the net tax paid to that other state on
16 that income against the net income tax otherwise payable to the state on income of
17 the same year. The credit may not be allowed unless the income taxed by the other
18 state is also considered income for Wisconsin tax purposes. The credit may not be
19 allowed unless claimed within the time provided in s. 71.75 (2), but s. 71.75 (4) does
20 not apply to those credits. For purposes of this paragraph, amounts declared and
21 paid under the income tax law of another state are considered a net income tax paid

1 to that other state only in the year in which the income tax return for that state was
2 required to be filed.

3 2. Income and franchise taxes paid to another state by a tax-option corporation,
4 partnership, or limited liability company that is treated as a partnership may be
5 claimed as a credit under this paragraph subd. 1. by that corporation's shareholders,
6 that partnership's partners, or that limited liability company's members who are
7 residents of this state and who otherwise qualify under this paragraph. This
8 subdivision does not apply to an entity that has made an election under s. 71.21 (6)
9 (a) or 71.365 (4m) (a).

10 SECTION 4. 71.21 (6) of the statutes is created to read:

11 71.21 (6) (a) If persons who, on the day on which an election is made, hold more
12 than 50 percent of the capital and profits of a partnership consent, a partnership that
13 is a partnership for federal income tax purposes may elect, on or before the due date
14 or extended due date of its return under this chapter, to be taxed at the entity level
15 as if it were a tax-option corporation electing under s. 71.365 (4m) (a).

16 (b) If persons who, on the day on which the election under this paragraph is
17 made, hold more than 50 percent of the capital and profits of a partnership consent,
18 a partnership that is a partnership for federal income tax purposes may elect, on or
19 before the due date or extended due date of its return under this chapter, to revoke
20 for that taxable year its election under par. (a).

21 (c) The department shall promulgate rules to implement this subsection.

22 SECTION 5. 71.36 (1) of the statutes is amended to read:

23 71.36 (1) It is the intent of this section that shareholders of tax-option
24 corporations include in their Wisconsin adjusted gross income their proportionate
25 share of the corporation's tax-option items unless the corporation elects under s.

1 71.365 (4) (a) not to be a tax-option corporation or elects under s. 71.365 (4m) (a) to
2 be taxed at the entity level.

3 **SECTION 6.** 71.365 (1) of the statutes is amended to read:

4 **71.365 (1) ADJUSTED BASIS OF SHAREHOLDERS' STOCK IN TAX-OPTION CORPORATION.**

5 For purposes of this chapter, the adjusted basis of a shareholder in the stock and
6 indebtedness of a tax-option corporation shall be determined in the manner
7 prescribed by the internal revenue code for a shareholder of an S corporation, except
8 that the nature and amount of items affecting that basis shall be determined under
9 this chapter. This subsection applies to taxable years of corporations for which an
10 election has been made under sub. (4m) (a). This subsection does not apply to 1978
11 and earlier taxable years of corporations which were S corporations for federal
12 income tax purposes or to taxable years of corporations for which an election has been
13 made under sub. (4) (a).

14 **SECTION 7.** 71.365 (4m) of the statutes is created to read:

15 **71.365 (4m) ELECTION TO PAY TAX AT THE ENTITY LEVEL.** (a) If persons who hold
16 more than 50 percent of the shares on the day on which an election is made consent,
17 a corporation that is an S corporation for federal income tax purposes may elect, on
18 or before the due date or extended due date of its return under this chapter, to pay
19 tax without taking into account the deductions from net income under s. 71.36 (1m)
20 (a) of amounts that would otherwise be included in the Wisconsin adjusted gross
21 income of its shareholders and the capital gains deduction under s. 71.05 (6) (b) 9.
22 for that taxable year and for later taxable years until its status is again changed.

23 (b) If persons who, on the day on which the election under this paragraph is
24 made, hold more than 50 percent of the shares of a corporation that has elected to
25 be taxed at the entity level under par. (a) consent, a corporation that is an S

1 corporation for federal income tax purposes may elect, on or before the due date or
2 extended due date of its return under this chapter, to revoke for that taxable year its
3 election under par. (a).

4 (c) The department shall promulgate rules to implement this subsection.

5 **SECTION 8.** 71.775 (3) (a) 4. of the statutes is created to read:

6 71.775 (3) (a) 4. The pass-through entity has elected under s. 71.21 (6) (a) or
7 71.365 (4m) (a) to be taxed at the entity level.

8 **SECTION 9. Initial applicability.**

9 (1) This act first applies to taxable years beginning on January 1, 2018.

10 (END)

9
↑
except that this act first
applies to taxable years
beginning on January 1,
2018, for tax-option
corporations



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-5985/P2 P3
EKL:wlj&km

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to amend* 71.05 (6) (a) 14., 71.07 (7) (b), 71.36 (1) and 71.365 (1); and *to*
2 *create* 71.05 (10) (dm), 71.21 (6), 71.365 (4m) and 71.775 (3) (a) 4. of the
3 statutes; **relating to:** election of pass-through entities to be taxed at the entity
4 level and requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

This bill allows pass-through entities to elect to be taxed at the entity level for purposes of the state's income and franchise taxes.

Under current law, pass-through entities, such as tax-option corporations and partnerships, are generally not subject to the income or franchise tax at the entity level. Rather, any item of income, loss, or deduction flows through to their shareholders, partners, or members, who are then subject to tax. The bill allows tax-option corporations and partnerships, including limited liability companies and other entities that are treated as partnerships under federal tax law, to elect to be taxed at the entity level for purposes of the income and franchise taxes. Persons who hold more than 50 percent ownership of the pass-through entity must consent to the election and must consent to any revocation of the election. The bill allows the election to be made for taxable years beginning in 2018.

1 corporation for federal income tax purposes may elect, on or before the due date or
2 extended due date of its return under this chapter, to revoke for that taxable year its
3 election under par. (a).

4 (c) The department shall promulgate rules to implement this subsection.

5 **SECTION 8.** 71.775 (3) (a) 4. of the statutes is created to read:

6 71.775 (3) (a) 4. The pass-through entity has elected under s. 71.21 (6) (a) or
7 71.365 (4m) (a) to be taxed at the entity level.

8 **SECTION 9. Initial applicability.**

9 (1) This act first applies to taxable years beginning on January 1, 2018.

10 (END)

Walker, Dan

From: Lunder, Erika
Sent: Monday, November 26, 2018 11:36 AM
To: Walker, Dan
Subject: request for fiscal analysis

Hi Dan,

I've always asked Mike about this, but I see he is out. Could you please tell me who I should ask to request a fiscal analysis of LRB-5985/P3? The request needs to be made ASAP.

Kira is finishing up the P3 now.

Thank you!
Erika



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-5985/P3
EKL:wj&km

(p4)
wj/km/cs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

IN: 11/27

DVE: 11/27

Go Cat

- 1 AN ACT ~~to amend~~ 71.05 (6) (a) 14., 71.07 (7) (b), 71.36 (1) and 71.365 (1); and *to*
2 *create* 71.05 (10) (dm), 71.21 (6), 71.365 (4m) and 71.775 (3) (a) 4. of the
3 statutes; **relating to:** election of pass-through entities to be taxed at the entity
4 level and requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

This bill allows pass-through entities to elect to be taxed at the entity level for purposes of the state's income and franchise taxes.

Under current law, pass-through entities, such as tax-option corporations and partnerships, are generally not subject to the income or franchise tax at the entity level. Rather, any item of income, loss, or deduction flows through to their shareholders, partners, or members, who are then subject to tax. The bill allows tax-option corporations and partnerships, including limited liability companies and other entities that are treated as partnerships under federal tax law, to elect to be taxed at the entity level for purposes of the income and franchise taxes. Persons who hold more than 50 percent ownership of the pass-through entity must consent to the election and must consent to any revocation of the election. The bill allows the election to be made for taxable years beginning in 2018 for tax-option corporations and 2019 for other entities.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 71.05 (6) (a) 14. of the statutes is amended to read:

2 71.05 (6) (a) 14. Any amount received as a proportionate share of the earnings
3 and profits of a corporation that is an S corporation for federal income tax purposes
4 if those earnings and profits accumulated during a year for which the shareholders
5 have elected under s. 71.365 (4) (a) not to be a tax-option corporation, to the extent
6 not included in federal adjusted gross income for the current year. This subdivision
7 does not apply to earnings and profits accumulated during a year for which the
8 shareholders have elected under s. 71.365 (4m) (a) to be taxed at the entity level.

9 **SECTION 2.** 71.05 (10) (dm) of the statutes is created to read:

10 71.05 (10) (dm) Any item of income, loss, or deduction passed through from an
11 entity that has made an election under s. 71.21 (6) (a) or 71.365 (4m) (a).

12 **SECTION 3.** 71.07 (7) (b) of the statutes is amended to read:

13 71.07 (7) (b) 1. Subject to conditions and limitations in pars. (c) and (d), if a
14 resident individual, estate or trust pays a net income tax to another state, that
15 resident individual, estate or trust may credit the net tax paid to that other state on
16 that income against the net income tax otherwise payable to the state on income of
17 the same year. The credit may not be allowed unless the income taxed by the other
18 state is also considered income for Wisconsin tax purposes. The credit may not be
19 allowed unless claimed within the time provided in s. 71.75 (2), but s. 71.75 (4) does
20 not apply to those credits. For purposes of this paragraph, amounts declared and
21 paid under the income tax law of another state are considered a net income tax paid

1 to that other state only in the year in which the income tax return for that state was
2 required to be filed.

3 2. Income and franchise taxes paid to another state by a tax-option corporation,
4 partnership, or limited liability company that is treated as a partnership may be
5 claimed as a credit under ~~this paragraph~~ subd. 1. by that corporation's shareholders,
6 that partnership's partners, or that limited liability company's members who are
7 residents of this state and who otherwise qualify under this paragraph. This
8 subdivision does not apply to an entity that has made an election under s. 71.21 (6)
9 (a) or 71.365 (4m) (a).

10 SECTION 4. 71.21 (6) of the statutes is created to read:

11 71.21 (6) (a) If persons who, on the day on which an election is made, hold more
12 than 50 percent of the capital and profits of a partnership consent, a partnership that
13 is a partnership for federal income tax purposes may elect, on or before the due date
14 or extended due date of its return under this chapter, to be taxed at the entity level
15 as if it were a tax-option corporation electing under s. 71.365 (4m) (a).

16 (b) If persons who, on the day on which the election under this paragraph is
17 made, hold more than 50 percent of the capital and profits of a partnership consent,
18 a partnership that is a partnership for federal income tax purposes may elect, on or
19 before the due date or extended due date of its return under this chapter, to revoke
20 for that taxable year its election under par. (a).

21 (c) The department shall promulgate rules to implement this subsection.

22 SECTION 5. 71.36 (1) of the statutes is amended to read:

23 71.36 (1) It is the intent of this section that shareholders of tax-option
24 corporations include in their Wisconsin adjusted gross income their proportionate
25 share of the corporation's tax-option items unless the corporation elects under s.

1 71.365 (4) (a) not to be a tax-option corporation or elects under s. 71.365 (4m) (a) to
2 be taxed at the entity level. pay tax

3 SECTION 6. 71.365 (1) of the statutes is amended to read:

4 71.365 (1) ADJUSTED BASIS OF SHAREHOLDERS' STOCK IN TAX-OPTION CORPORATION.

5 For purposes of this chapter, the adjusted basis of a shareholder in the stock and
6 indebtedness of a tax-option corporation shall be determined in the manner
7 prescribed by the internal revenue code for a shareholder of an S corporation, except
8 that the nature and amount of items affecting that basis shall be determined under
9 this chapter. This subsection applies to taxable years of corporations for which an
10 election has been made under sub. (4m) (a). This subsection does not apply to 1978
11 and earlier taxable years of corporations which were S corporations for federal
12 income tax purposes or to taxable years of corporations for which an election has been
13 made under sub. (4) (a).

14 SECTION 7. 71.365 (4m) of the statutes is created to read:

15 71.365 (4m) ELECTION TO PAY TAX AT THE ENTITY LEVEL. (a) If persons who hold
16 more than 50 percent of the shares on the day on which an election is made consent,
17 a corporation that is an S corporation for federal income tax purposes may elect, on
18 or before the due date or extended due date of its return under this chapter, to pay
19 tax without taking into account the deductions from net income under s. 71.36 (1m)
20 (a) of amounts that would otherwise be included in the Wisconsin adjusted gross
21 income of its shareholders and the capital gains deduction under s. 71.05 (6) (b) 9.
22 for that taxable year and for later taxable years until its status is again changed.

23 (b) If persons who, on the day on which the election under this paragraph is
24 made, hold more than 50 percent of the shares of a corporation that has elected to
25 be taxed at the entity level under par. (a) consent, a corporation that is an S

1 corporation for federal income tax purposes may elect, on or before the due date or
2 extended due date of its return under this chapter, to revoke for that taxable year its
3 election under par. (a).

4 (c) The department shall promulgate rules to implement this subsection.

5 **SECTION 8.** 71.775 (3) (a) 4. of the statutes is created to read:

6 71.775 (3) (a) 4. The pass-through entity has elected under s. 71.21 (6) (a) or
7 71.365 (4m) (a) to be taxed at the entity level.

8 **SECTION 9. Initial applicability.**

9 (1) This act first applies to taxable years beginning on January 1, 2019, except
10 that this act first applies to taxable years beginning on January 1, 2018, for
11 tax-option corporations.

12 (END)

Lunder, Erika

From: Thomas J. Nichols <tjn@mtfn.com>
Sent: Tuesday, November 27, 2018 7:56 AM
To: Lunder, Erika
Cc: Marklein, Howard; Williams, Vincent; Prange, Katy; russell.wolff@bakertilly.com; James W. DeCleene
Subject: LRB-5985/P1 Language
Attachments: 71.36(1) 11.27.18.DOCX

Erika, in going over the LRB-5985/P1 language, it looks like there are two cleanup items that still need to be taken care of with respect to this draft:

1. A clarifying change should be made to section 71.36(1) of the statutes, and attached is language to accomplish this. I think you will see that this is pretty straightforward and necessary.
2. Also, as we discussed last week, the language below for section 71.365(1) still needs to be tweaked to make it clear that that section still does apply to corporations making the new 71.365(4m) election (even though that section will not apply to corporations making the 71.365(4)(a) election).

I am not sure of the timing on all of this, but I understand from Sen. Marklein that it is very tight. Could you send me a copy of whatever changes you are able to make as soon as they are available? If you would like to talk through any of this, please do not hesitate to give me a call. As always, I am available through the office phone noted below (extension 1380 after hours) or on my cell (414-617-6355).

Thomas J. Nichols | Attorney at Law

MEISSNER TIERNEY
FISHER & NICHOLS

111 EAST KILBOURN AVENUE, 19th FLOOR
MILWAUKEE, WI 53202
P 414.273.1300 x1380 | F 414.273.5840
[website](#) | [bio](#) | [vCard](#) | [LinkedIn](#) | [map](#) | [email](#)

From: Lunder, Erika <Erika.Lunder@legis.wisconsin.gov>
Sent: Tuesday, November 20, 2018 8:32 AM
To: Thomas J. Nichols <tjn@mtfn.com>
Subject: RE: S-Corporation to elect out of passthrough status for Wisconsin tax purposes only

Hello,

Thanks for getting back to me last night. Would the below language work? I ran it by Vince and we wanted to double check with you.

71.365 (1) ADJUSTED BASIS OF SHAREHOLDERS' STOCK IN TAX-OPTION CORPORATION.

For purposes of this chapter, the adjusted basis of a shareholder in the stock and indebtedness of a tax-option corporation shall be determined in the manner prescribed by the internal revenue code for a shareholder of an S corporation, except that the nature and amount of items affecting that basis shall be determined under this chapter. This Except for tax-option corporations for which an election has been made under sub. (4m) (a), this subsection does not apply to 1978 and earlier taxable years of corporations which were S corporations for federal income tax purposes or to taxable years of corporations for which an election has been made under sub. (4) (a).

Thanks!
Erika

P.S. You looked so familiar to me yesterday, and I realized later it is because of your work with the S Corporation Association and testimony before Congress. When I was at CRS, my colleagues and I found your writings and testimony to be very helpful when presenting legislative policy options on S corps to Members and their staff.

From: Thomas J. Nichols <tjn@mtfn.com>
Sent: Tuesday, November 13, 2018 4:38 PM
To: Williams, Vincent <Vincent.Williams@legis.wisconsin.gov>; Kreye, Joseph <Joseph.Kreye@legis.wisconsin.gov>; Lunder, Erika <Erika.Lunder@legis.wisconsin.gov>; Russell Wolff <Russell.Wolff@bakertilly.com>
Cc: Sen.Marklein <Sen.Marklein@legis.wisconsin.gov>; Rep.Kooyenga <Rep.Kooyenga@legis.wisconsin.gov>; Lonergan, Sandy <Sandy.Lonergan@legis.wisconsin.gov>
Subject: RE: S-Corporation to elect out of passthrough status for Wisconsin tax purposes only

All, attached is proposed draft statutory language. As you will see, I tried to build upon language already contained in the statutes as much as possible. I realize that you will all want to take a careful look at this, but hopefully this will be a good start.

Thomas J. Nichols | Attorney at Law

MEISSNER TIERNEY
ATTORNEYS AT LAW

111 EAST KILBOURN AVENUE, 19th FLOOR
MILWAUKEE, WI 53202
P 414.273.1300 x1380 | F 414.273.5840
[website](#) | [bio](#) | [vCard](#) | [LinkedIn](#) | [map](#) | [email](#)

From: Williams, Vincent <Vincent.Williams@legis.wisconsin.gov>
Sent: Tuesday, November 13, 2018 9:21 AM
To: Thomas J. Nichols <tjn@mtfn.com>; Kreye, Joseph <Joseph.Kreye@legis.wisconsin.gov>; Lunder, Erika <Erika.Lunder@legis.wisconsin.gov>
Cc: Sen.Marklein <Sen.Marklein@legis.wisconsin.gov>; Rep.Kooyenga <Rep.Kooyenga@legis.wisconsin.gov>; Lonergan, Sandy <Sandy.Lonergan@legis.wisconsin.gov>
Subject: S-Corporation to elect out of passthrough status for Wisconsin tax purposes only

Hi Tom,

This is a follow-up to Sen. Marklein's phone call.

Included on this email is Joseph Kreye and Erika Lunder from the Legislative Reference Bureau. They are the drafting attorneys responsible for this subject matter.

Sen. Marklein has given the drafting attorneys permission to discuss this draft with you.

You may connect with the drafting attorneys directly to work on the language for this change.

Regards,

Vince Williams

Legislative Aide & Committee Clerk
Office of State Senator Howard Marklein
17th Senate District
PO Box 7882
Madison, WI 53707-7882
www.legis.wisconsin.gov
(608) 266-0703 or (800) 978-8008

§71.36(1): It is the intent of this section that shareholders of tax-option corporations include in their Wisconsin adjusted gross income their proportionate share of the corporation's tax-option items unless the corporation elects under s. 71.365 (4) (a) not to be a tax-option corporation or under s. 71.365(4m) to pay tax at the entity level.

Pass-Through Entity Level Taxation Election – LRB-5985/P3

SECTION 1. 71.05 (6) (a) 14. of the statutes is amended to read:

71.05 (6) (a) 14. Any amount received as a proportionate share of the earnings and profits of a corporation that is an S corporation for federal income tax purposes if those earnings and profits accumulated during a year for which the shareholders have elected under s. 71.365 (4) (a) not to be a tax-option corporation, to the extent not included in federal adjusted gross income for the current year. This subdivision does not apply to earnings and profits accumulated during a year for which the shareholders have elected a tax-option corporation has made an election under s. 71.365 (4m) (a) to be taxed at the entity level.

SECTION 2. 71.05 (10) (dm) of the statutes is created to read:

71.05 (10) (dm) Any item of income, loss, or deduction passed through from an entity that has made an election under s. 71.21 (6) (a) or 71.365 (4m) (a) to pay tax at the entity level.

SECTION 3. 71.07 (7) (b) of the statutes is amended to read:

(b) 1. Subject to conditions and limitations in pars. (c) and (d), if a resident individual, estate or trust pays a net income tax to another state, that resident individual, estate or trust may credit the net tax paid to that other state on that income against the net income tax otherwise payable to the this state on income of the same year. The credit may not be allowed unless the income taxed by the other state is also considered income for Wisconsin tax purposes. The credit may not be allowed unless claimed within the time provided in s. 71.75 (2), but s. 71.75 (4) does not apply to those credits. For purposes of this paragraph, amounts declared and paid under the income tax law of another state are considered a net income tax paid to that other state only in the year in which the income tax return for that state was required to be filed.

2. Income and franchise taxes paid to another state by a tax-option corporation, partnership, or limited liability company that is treated as a partnership may be claimed as a credit under this paragraph by that corporation's shareholders, that partnership's partners, or that limited liability company's members who are residents of this state and who otherwise qualify under this paragraph, unless the tax-option corporation, partnership, or limited liability company has made an election under s. 71.21 (6) (a) or 71.365 (4m) (a).

3. Subject to the conditions and limitations in pars. (c) and (d), if a tax-option corporation, partnership, or limited liability company makes an election under s. 71.21 (6) (a) or 71.365 (4m) (a), that tax-option corporation, partnership, or limited liability company may credit the net income or franchise tax paid by the entity to another state on that income and the net income tax on that income paid by the entity on behalf of its shareholders, partners and members that are residents of this state on a composite return filed with the other state against the net income or franchise tax otherwise payable to this state on income of the same year. The credit may not be allowed unless the income taxed by the other state is also considered income for Wisconsin tax purposes and is otherwise attributable to amounts that would be reportable to this state by shareholders, partners, or members of the tax-option corporation, partnership, or limited liability company that are residents of this state if the election under s. 71.21 (6) (a) or 71.365 (4m) (a) was not made. The credit may not be allowed unless claimed within the time provided in s. 71.75 (2), but s. 71.75 (4) does not apply to those credits. For purposes of this paragraph, amounts declared and paid

under the income tax law of another state are considered a net income tax paid to that other state only in the year in which the income tax return for that state was required to be filed.

(c) The total credits under subds. 1. and 2. of par. (b) may not exceed an amount determined by multiplying the taxpayer's net Wisconsin income tax by a ratio derived by dividing the income subject to tax in the other state that is also subject to tax in Wisconsin while the taxpayer is a resident of Wisconsin, by the taxpayer's Wisconsin adjusted gross income. The credit under subd. 3. of par. (b) may not exceed an amount determined by multiplying the income subject to tax in the other state that is also subject to tax in Wisconsin by 7.9%.

(d) The limitation in par. (c) does not apply to income that is taxed by one of the 4 states that border this state.

SECTION 4. 71.21 (6) of the statutes is created to read:

71.21 (6)

(a) If persons who, on the day on which an election under this paragraph is made, hold more than 50 percent of the capital and profits of a partnership consent, a partnership that is a partnership for federal income tax purposes may elect, on or before the due date or extended due date of its return under this chapter, to be taxed at the entity level at a rate of 7.9 percent of net income reportable to this state as described in par. (d) 1. as if it were a tax-option corporation electing under s. 71.365 (4m) (a).

(b) It is the intent of the election under par. (a) that partners of a partnership shall not include in their Wisconsin adjusted gross income their proportionate share of all items of income, gain, loss, or deduction of the partnership. It is also the intent that the partnership pay tax on items that would otherwise be taxed if this election was not made.

~~(b)~~ (c) If persons who, on the day on which the election under this paragraph is made, hold more than 50 percent of the capital and profits of a partnership that has elected to be taxed at the entity level under par. (a) consent, a partnership that is a partnership for federal income tax purposes may elect, on or before the due date or extended due date of its return under this chapter, to revoke for that taxable year its election under par. (a).

(d) If an election is made under par. (a).

1. The net income of the partnership is computed under s. 71.21 (1) to (5) and the situs of income shall be determined as if the election under par. (a) was not made.
2. The partnership may not claim the loss under s. 71.05 (8).
3. Except as provided in s. 71.07 (7) (b) 3., the tax credits under this chapter shall not be claimed by the partnership.
4. A partner's adjusted basis of the partner's interest in the partnership is determined as if the election under par. (a) was not made.
5. The provisions of ss. 71.09 and 71.84 relating to estimated payments and underpayment interest shall apply to the partnership.

6. If the partnership fails to pay the amount owed to the department with respect to income as a result of the election under par. (a), the department may collect such amount from the partners based on their proportionate share of such income.

~~(e)~~ (e) The department shall may promulgate rules to implement this subsection.

SECTION 5. 71.36 (1) of the statutes is amended to read:

71.36 (1) It is the intent of this section that shareholders of tax-option corporations include in their Wisconsin adjusted gross income their proportionate share of the corporation's tax-option items unless the corporation elects under s. 71.365 (4) (a) not to be a tax-option corporation or elects under s. 71.365 (4m) (a) to be taxed at the entity level.

SECTION 6. 71.365 (1) of the statutes is amended to read:

71.365 (1) ADJUSTED BASIS OF SHAREHOLDERS' STOCK IN TAX-OPTION CORPORATION.

(a) For purposes of this chapter, the adjusted basis of a shareholder in the stock and indebtedness of a tax-option corporation shall be determined in the manner prescribed by the internal revenue code for a shareholder of an S corporation, except that the nature and amount of items affecting that basis shall be determined under this chapter. ~~This subsection applies to taxable years of corporations for which an election has been made under sub. (4m) (a).~~ This subsection does not apply to 1978 and earlier taxable years of corporations which were S corporations for federal income tax purposes or to taxable years of corporations for which an election has been made under sub. (4) (a).

(b) The adjusted basis of a shareholder in the stock and indebtedness of a tax-option corporation that has made an election under s. 71.365 (4m) (a) is determined as if the election was not made.

SECTION 7. 71.365 (4m) of the statutes is created to read:

71.365 (4m) TAX-OPTION CORPORATION ELECTION TO PAY FRANCHISE OR INCOME TAX AT THE ENTITY LEVEL.

(a) If persons who hold more than 50 percent of the shares on the day on which an election under this paragraph is made consent, a corporation that is an S corporation for federal income tax purposes may elect, on or before the due date or extended due date of its return under this chapter, to pay tax at the entity level at a rate of 7.9 percent of net income reportable to this state as described in par. (d) 1. ~~without taking into account the deductions from net income under s. 71.36 (1m) (a) of amounts that would otherwise be included in the Wisconsin adjusted gross income of its shareholders and the capital gains deduction under s. 71.05 (6) (b) 9. for that taxable year and for later taxable years until its status is again changed.~~

(b) It is the intent of the election under par. (a) that shareholders of a tax-option corporation shall not include in their Wisconsin adjusted gross income their proportionate share of all items of income, gain, loss, or deduction of the tax-option corporation. It is also the intent that the tax-option corporation pay tax on items that would otherwise be taxed if this election was not made.

~~(b)~~ (c) If persons who, on the day on which the election under this paragraph is made, hold more than 50 percent of the shares of a corporation that has elected to be taxed at the entity level under par. (a) consent, a corporation that is an S corporation for federal income tax purposes may elect, on or before the due date or extended due date of its return under this chapter, to revoke for that taxable year its election under par. (a).

(d) If an election is made under par. (a),

1. The net income of the tax-option corporation is computed under s. 71.34 (1k) and the situs of income shall be determined as if the election was not made.
2. Except as provided in s. 71.07 (7) (b) 3., the tax credits under this chapter shall not be claimed by the tax-option corporation.
3. The tax-option corporation shall not claim losses under ss. 71.05 (8) and 71.26 (4).
4. The provisions of ss. 71.29 and 71.84 relating to estimated payments and underpayment interest shall apply to the tax-option corporation for the taxable year beginning in 2019 and later years.
5. If the tax-option corporation fails to pay the amount owed to the department with respect to income as a result of the election under par. (a), the department may collect such amount from the shareholders based on their proportionate share of such income.

~~(e)~~ (e) The department shall may promulgate rules to implement this subsection.

SECTION 8. 71.775 (3) (a) 4. of the statutes is created to read:

71.775 (3) (a) 4. The pass-through entity has elected under s. 71.21 (6) (a) or 71.365 (4m) (a) to be taxed at the entity level.

SECTION 9. Initial applicability.

This act first applies to taxable years beginning on January 1, 2019, except that this act first applies to taxable years beginning on January 1, 2018, for tax-option corporations.

Lunder, Erika

From: Williams, Vincent
Sent: Thursday, November 29, 2018 11:02 AM
To: Lunder, Erika
Subject: FW: One suggested change per my voicemail
Attachments: Pass-Through Entity Tax Election 11-29-18b.docx

Importance: High

This is final.

From: Weber, Nathaniel R - DOR <Nathaniel.Weber@wisconsin.gov>
Sent: Thursday, November 29, 2018 11:00 AM
To: Thomas J. Nichols <tjn@mtfn.com>
Cc: Marklein, Howard <Howard.Marklein@legis.wisconsin.gov>; Williams, Vincent <Vincent.Williams@legis.wisconsin.gov>; Prange, Katy <Katy.Prange@legis.wisconsin.gov>; Joseph E. Tierney <jet@mtfn.com>; James W. DeCleene <jwd@mtfn.com>; Kvammen, Craig J - DOR <Craig.Kvammen@wisconsin.gov>; Russell Wolff <Russell.Wolff@bakertilly.com>; Jon P. Skavlem <Jon.Skavlem@bakertilly.com>
Subject: RE: One suggested change per my voicemail
Importance: High

I added your three words below. I also highlighted the other changes we made to the document that were discussed on our phone conversation this morning.

Nate Weber, CPA

Director, Office of Technical Services
Division of Income, Sales & Excise Tax
Wisconsin Department of Revenue
PO Box 8933 Mail Stop 6-40
Madison, WI 53708-8933
Phone: 608-266-8025

From: Thomas J. Nichols [<mailto:tjn@mtfn.com>]
Sent: Thursday, November 29, 2018 10:55 AM
To: Weber, Nathaniel R - DOR <Nathaniel.Weber@wisconsin.gov>
Cc: Marklein, Howard - LEGIS <Howard.Marklein@legis.wisconsin.gov>; Williams, Vincent - LEGIS <Vincent.Williams@legis.wisconsin.gov>; Prange, Katy - LEGIS <Katy.Prange@legis.wisconsin.gov>; Joseph E. Tierney <jet@mtfn.com>; James W. DeCleene <jwd@mtfn.com>; Kvammen, Craig J - DOR <Craig.Kvammen@wisconsin.gov>; Russell Wolff <Russell.Wolff@bakertilly.com>; Jon P. Skavlem <Jon.Skavlem@bakertilly.com>
Subject: One suggested change per my voicemail

and is otherwise attributable to amounts that would be reportable to this state by shareholders, partners, or members of the tax-option corporation, partnership, or limited liability company that are residents of this state if the election under s. 71.21 (6) (a) or 71.365 (4m) (a) was not made.

Thomas J. Nichols | Attorney at Law

MEISSNER  TIERNEY

111 EAST KILBOURN AVENUE, 19th FLOOR
MILWAUKEE, WI 53202
P 414.273.1300 x1380 | F 414.273.5840
[website](#) | [bio](#) | [vCard](#) | [LinkedIn](#) | [map](#) | [email](#)

From: Weber, Nathaniel R - DOR <Nathaniel.Weber@wisconsin.gov>
Sent: Thursday, November 29, 2018 10:46 AM
To: Thomas J. Nichols <tjn@mtfn.com>
Cc: Marklein, Howard - LEGIS <Howard.Marklein@legis.wisconsin.gov>; Williams, Vincent - LEGIS <Vincent.Williams@legis.wisconsin.gov>; Prange, Katy - LEGIS <Katy.Prange@legis.wisconsin.gov>; Joseph E. Tierney <jet@mtfn.com>; James W. DeCleene <jwd@mtfn.com>; Kvammen, Craig J - DOR <Craig.Kvammen@wisconsin.gov>; Russell Wolff <Russell.Wolff@bakertilly.com>; Jon P. Skavlem <Jon.Skavlem@bakertilly.com>
Subject: RE: 71.07(7) 11.29.18.DOCX
Importance: High

Tom,

Attached is our slight revisions to your suggested language (highlighted in yellow). We also made the minor other changes we discussed.

We believe this is workable language to give to LRB.

Nate Weber, CPA

Director, Office of Technical Services
Division of Income, Sales & Excise Tax
Wisconsin Department of Revenue
PO Box 8933 Mail Stop 6-40
Madison, WI 53708-8933
Phone: 608-266-8025

From: Thomas J. Nichols [<mailto:tjn@mtfn.com>]
Sent: Thursday, November 29, 2018 9:55 AM
To: Weber, Nathaniel R - DOR <Nathaniel.Weber@wisconsin.gov>; Kvammen, Craig J - DOR <Craig.Kvammen@wisconsin.gov>; Russell Wolff <Russell.Wolff@bakertilly.com>; Jon P. Skavlem <Jon.Skavlem@bakertilly.com>
Cc: Marklein, Howard - LEGIS <Howard.Marklein@legis.wisconsin.gov>; Williams, Vincent - LEGIS <Vincent.Williams@legis.wisconsin.gov>; Prange, Katy - LEGIS <Katy.Prange@legis.wisconsin.gov>; Joseph E. Tierney <jet@mtfn.com>; James W. DeCleene <jwd@mtfn.com>
Subject: 71.07(7) 11.29.18.DOCX

Nate, Craig, Ross and Jon, attached is draft new language (highlighted in green) for section 71.07 (7) (b) that I think reflects what we discussed in our phone conversation earlier this morning. Let me know if you think this works. Nate and Craig, I understand that you will be making the changes that we discussed for the other sections. I will try to make myself available all day today if it would be helpful to talk about any of this.

Thomas J. Nichols | Attorney at Law

MEISSNER TIERNEY

111 EAST KILBOURN AVENUE, 19th FLOOR

MILWAUKEE, WI 53202
P 414.273.1300 x1380 | F 414.273.5840
[website](#) | [bio](#) | [vCard](#) | [LinkedIn](#) | [map](#) | [email](#)

PRIVILEGE AND CONFIDENTIALITY NOTICE: This electronic mail and the information contained herein are intended for the named recipient only. It may contain confidential and/or attorney privileged matter. If you have received this electronic mail in error, please do not read any text other than the text of this Notice and do not open any attachments. Also, please immediately notify the sender by replying to this electronic mail or by collect call to **414.273.1300**. After notifying the sender as described above, please delete this electronic mail message immediately and purge the item from the deleted items folder (or the equivalent) of your electronic mail system. Thank you.

CONFIDENTIALITY NOTICE: This electronic mail transmission and any accompanying documents contain information belonging to the sender which may be confidential and legally privileged. This information is only for the use of the individual or entity to whom this electronic mail transmission was intended. If you are not the intended recipient, any disclosure, copying, distribution, or action taken in reliance on the contents of the information contained in this transmission is strictly prohibited. If you have received this transmission in error, please immediately contact the sender and delete the message. Thank you.

CONFIDENTIALITY NOTICE: This electronic mail transmission and any accompanying documents contain information belonging to the sender which may be confidential and legally privileged. This information is only for the use of the individual or entity to whom this electronic mail transmission was intended. If you are not the intended recipient, any disclosure, copying, distribution, or action taken in reliance on the contents of the information contained in this transmission is strictly prohibited. If you have received this transmission in error, please immediately contact the sender and delete the message. Thank you.